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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,968	07/23/2001	Brigitte Benage	0036-PA	2557

7590 05/04/2005

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EXAMINER

NGUYEN, TAM M

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action Before the Filing of an Appeal Brief	Application No. 09/910,968	Applicant(s) BENAGE ET AL.	
	Examiner Tam M. Nguyen	Art Unit 1764	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1, 2, 9, and 17-26.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Please see attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


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The argument that it is not obvious to combine the Arhancet process and the Higgins process because Higgins does not teach the use of nitroxyl-containing compounds, does not teach the difficulties encountered in using nitroxyl-containing compounds as inhibitors, and does not suggest the problems involved in using nitroxyl-containing compounds as inhibitor can be overcome by recycling a stream containing such inhibitors at temperature no higher than about 110° C and at a pressure below 760 mmHg is not persuasive. The examiner relied upon Higgins to teach that a spent inhibitor can be recycled for reuse. As admitted by applicants, it is known that the recycling of streams utilizing nitroxyls as polymerization inhibitors in plants employing temperatures in excess of about 115° C causes loss of inhibitor efficiency and the Arhancet process is operated at temperature of 110° C, at a pressure below 760 mm Hg and employed nitroxyl-containing compounds as inhibitors as claimed. Therefore, when the recycling step is employed in the process of Arhancet, one of skill in the art would continually maintain the process of Arhancet at its desired temperatures, which is less 115° C, it would be expected that the cause of loss of inhibitor efficiency would not be occurred.

The argument that the use of a continuous operation wherein the continuity includes the recycling of a nitroxyl inhibitor presents special problems with regard to effectiveness that one does not encounter with other inhibitors such as dinitrophenols is not persuasive because Arhancet use nitroxyl inhibitor and is a continuous process operating at conditions as claimed. It would be expected that the results would be the same or similar when operating the process continually with or without the recycled step because, with the recycling step, the Arhancet distillation column is still operated with the same conditions and the same inputs of a

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hydrocarbon feed and a nitroxyl-containing compound inhibitor as when operating the process without the recycling step.

The argument that there would be no motivation to use a mixture of two or more nitroxyls-containing inhibitors is not persuasive because the examiner maintains that one of skill in the art would use a single nitroxyl-containing compound inhibitor or a mixture of two or more nitroxyls-containing compound inhibitors because each of the nitroxyl-containing inhibitors of Arhancet has an equivalent function. Therefore, it would be expected that the mixture of the two nitroxyls would have similar results as a single nitroxyl inhibitor.


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